

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING

2019 OCT 22 PM 2:51

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

MARGARET BOTKINS, CLERK  
CHEYENNE

EUGENE SCALIA, SECRETARY OF  
LABOR, U.S. DEPARTMENT OF LABOR,

Plaintiff,

v.

BLACKJEWEL, LLC, a corporation,  
BLACKJEWEL HOLDINGS, LLC, a  
corporation, REVELATION ENERGY  
HOLDINGS, LLC, a corporation,  
REVELATION MANAGEMENT  
CORPORATION, a corporation,  
REVELATION ENERGY, LLC, a  
corporation, DOMINION COAL  
CORPORATION, a corporation, HAROLD  
KEENE COAL CO., LLC, a corporation,  
VANSANT COAL CORPORATION, a  
corporation, LONE MOUNTAIN  
PROCESSING, LLC, a corporation,  
POWELL MOUNTAIN ENERGY, LLC, a  
corporation, and CUMBERLAND RIVER  
COAL, LLC, a corporation,

Defendants.

**CONSENT JUDGMENT**

Case No. 19-CV-00217-ABJ

**CONSENT JUDGMENT**

Plaintiff, Eugene Scalia, Secretary of Labor, United States Department of Labor, hereinafter referred to as “Plaintiff” or “the Secretary,” has filed his Complaint alleging violations of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (hereinafter “the Act”). Defendants named above, hereinafter referred to as “Defendants” or “Employers,” have appeared by counsel, and waived formal service of process of the Summons and Complaint, and any defense, which they may have in this Civil Action, and hereby agree to the entry of this Consent Judgment without contest. It is, therefore, upon motion of the attorneys for Plaintiff and for cause shown:

ORDERED, ADJUDGED, AND DECREED that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 6, 7, and 15 of the Act, in any manner, specifically:

1. Defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Sections 6 and 15(a)(2) of the Act.

2. Defendants shall not, contrary to Section 7 of the Act, employ any of their employees including, but not limited to, any of their employees who are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the Act, for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless the said employees receive compensation for their employment in excess of the prescribed hours at a rate equivalent to one and one-half times the regular rates applicable to them.

3. Defendants shall not, contrary to Section 15(a)(1) of the Act, transport, offer for transportation, ship, deliver, or sell in commerce, or ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods, in the production of which any employee was employed in violation of Section 6 or 7 of the Act.

4. Defendants shall not discharge or take any retaliatory action against any of their employees, whether or not directly employed by Defendants, because the employee engages in any of the following activities pursuant to Section 15(a)(3) of the Act:

i. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Employers or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;

ii. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation promulgated pursuant to the Act, by the Employers or another employer with whom there is a business relationship;

iii. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act.

It is further ORDERED, ADJUDGED and DECREED by the Court that:

5. Defendants are enjoined and restrained from withholding gross back wages in the sum total amount of \$793,847 due to certain employees and former employees of Defendants listed and identified in Schedule A, attached hereto and made a part hereof.

6. Upon the closing of the sale approved by the Southern District of West Virginia Bankruptcy Court on October 3, 2019 by the Order Authorizing the Private Sale of the Western Assets to Eagle Specialty Materials, LLC Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances and Granting Related Relief (*See In re: Blackjewel, LLC, et al.*, No. 19-bk-30289, ECF No. 1187), the Defendants will pay the back wages of \$793,847 to their employees as specified below, and this amount shall represent the full extent of back wages owed by Defendants for the relevant period, June 24, 2019 to July 1, 2019, to the employees set forth and identified on the attached Schedule A. It is further agreed that the minimum wage and

overtime compensation payments by Defendants in the amount specified above are in the nature of back wages pursuant to the provisions of the Act. The Defendants, shall remain responsible for all tax payments considered to be the “employer’s share,” including, but not limited to, FICA.

i. The provisions of this Consent Judgment relative to back wages shall be deemed satisfied when Defendant Blackjewel delivers to each person listed on Schedule A the gross pay less all legally mandated deductions to the back wages, including, but not limited to, the employee’s share of FICA and other taxes.

ii. No later than **90** days from the date the Court enters this Consent Judgment, Defendants shall pay to Plaintiff either by ACH transfer, credit card, or debit card by going to <https://www.pay.gov/public/form/start/77689032> or [www.pay.gov](http://www.pay.gov) or by delivering a check made payable to “Wage and Hour Division – Labor,” delivered to U.S. Department of Labor – Wage and Hour Division, Wage and Hour Regional Office, 525 S. Griffin St, Suite 800, Dallas, TX 75202 (noting “XXX- DO” on the check) the total net amount of any checks for back wages which cannot be distributed to identified employees in Schedule A, or to their estates if that is necessary because of inability of the parties to locate the proper persons, or because of such person’s refusal to accept such sums.

iii. Any sums not distributed to the employees or former employees listed on Schedule A, or to their estates, because of inability to locate the proper persons or because of such persons’ refusal to accept such sums, shall be deposited with the Treasurer of the United States pursuant to Section 16(c) of the Act.

iv. The provisions of this Consent Judgment shall not in any way affect any legal right of any individual not named on Schedule A, nor shall the provisions in any way affect

any legal right of any individual named on Schedule A to file any action against Defendants for any violations alleged to have occurred outside the relevant period.

v. The payment of the back wages totaling \$793,847 in accordance with this Consent Judgment shall be considered compensation for work performed at the Eagle Butte Mine and Belle Ayr Mine from June 24, 2019 to July 1, 2019.

7. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Judgment. Any such amount shall be immediately paid to the Secretary for deposit as described above, and Defendants shall have no further obligations with respect to such returned monies. If the recovered wages have not been claimed by the employee or the employee's estate within three years of the entry of this Consent Judgment, the Acting Secretary shall deposit such money with the Treasury in accordance with Section 16(c) of the Act.

8. The parties agree that the instant action is deemed to solely cover Defendants' business and operations for the relevant period for all claims raised in the Complaint as a result of the Secretary's investigation. The parties agree that the filing of the Complaint and the provisions of this Consent Judgment shall not, in any way, affect, determine, or prejudice any and all rights of any person specifically named on Schedule A or the Secretary for any period before June 24, 2019, or after July 1, 2019, or any persons, be they current or former employees, not specifically named on Schedule A, insofar as such rights are conferred and reserved to said employees by reason of Section 16(b) of the Act.

9. Defendants agree that they are employers within the meaning of Section 3(d) of the Act.

10. The Parties, in order to amicably resolve disputed issues of fact and law concerning this matter, and to avoid protracted litigation, have agreed to this Consent Judgment. The agreements, statements, findings, and actions herein are made solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any purpose, except for proceedings brought under the Act.

11. The parties agree that all matters addressed in the Complaint have been fully and finally resolved by this Consent Judgment.

12. By entering into this Consent Judgment, Plaintiff does not waive his right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to Section 16(e) of the FLSA, with respect to any other violations disclosed by such investigations.

It is FURTHER, ORDERED, ADJUDGED, AND DECREED that each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney fees, which may be available under the Equal Access to Justice Act, as amended.


  
UNITED STATES DISTRICT JUDGE


Dated: October 22, 2019



Defendants have appeared by counsel and hereby consent to the entry of this Judgment.

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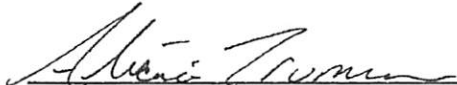
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